

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Health

Health Regulation and Licensing
Administration
Medical Marijuana Program



Cultivation Centers and Dispensaries Frequently Asked Questions for the Medical Marijuana Program FAQ #2

Question: The new regulations say that trade names must be approved by DOH and I am wondering if the approval of my letter of intent was also approval of my trade name or if there is a specific procedure for getting DOH to approve my trade name?

Response: When an organization is notified that is approved for registration, the Department will notify the organization if the name is NOT acceptable. Please refer to 22-C DCMR 5500.1-5500.4 for information regarding the name of an organization.

5500.1 No dispensary or cultivation center registered under the Act shall utilize any name other than that of an individual, including a corporate or trade name, without first obtaining approval from the Department for use of the corporate or trade name.

5500.2 A dispensary or cultivation center registered under the Act may file a written request with the Department to add an additional trade name at a location currently authorized for the sale of medical marijuana. The Department, in its discretion, may approve the use of an additional trade name. Any additional trade name approved by the Department shall appear on the establishment's written registration.

5500.3 A dispensary or cultivation center registered under the Act shall not use or display a trade name, corporate name, or sign bearing the words "pharmacy", "apothecary", "drug store", or other phrase that implies that the practice of any health profession occurs on the premises.

5500.4 Any trade name requested by an applicant shall not be identical or confusingly similar to one currently used under a previously issued or existing registration.

Question: Department vs. Mayor: There seems to be some inconsistencies regarding who we submit information to...the Mayor or the Department. For example, section 5405.3 (pg 63) and 5406.3 reference the written security plan for the dispensary application and the cultivation center application. In 5405.3 referencing the dispensary security plan, the last sentence says "The Department shall not issue a dispensary registration

until MPD's or its designee's completion of its security plan assessment and submission of that assessment in writing to the **Department.**" In 5406.3 (re: cultivation center) it says in writing to the **Mayor.** Is this a typo?

Most action required by D.C. are noted as being done by the Department, however I also noticed other references to the Mayor. For example: If you reference section 5607.10 (pg. 76) - "A dispensary shall submit it's labeling to the **Mayor** for approval and record. The **Mayor** shall transmit the final dispensary labeling designs to the MPD." Are these correct?

Response: The Mayor issues the regulations and delegates authority to the Department and/or to the Metropolitan Police Department. Please refer to the preamble of the 4th Proposed and Emergency Regulations published in the DC Register and on the DC Medical Marijuana Program website on August 12, 2011.

Question: Application Confidentiality: Will the applications or portions of the applications be made public? I am concerned about the confidentiality of my security plan (this would pose a serious security risk if it were made public), as well as my operations manuals (due to intellectual property). Will abridged versions be acceptable if they are made public? And if they are made public, will there be an opportunity for a private viewing of the full plan/manuals?

Response: When an application for a registration for a cultivation center or a dispensary is delivered to the Department of Health, the application becomes a "public record" for purposes of the District of Columbia Freedom of Information Act, or FOIA, DC Official Code §§ 2-531 et seq. FOIA provides that any person has the right to request access to public records in the possession, custody, or control of a District of Columbia public body such as the Department of Health. The term "access" means a right to inspect public documents and to request copies of public records. Please see <http://government.dc.gov/DC/Government/Data+&+Transparency/Freedom+of+Information+Act> for more details regarding FOIA.

All public bodies of the District government, including the Department of Health, are required to disclose public records, except for those records, or portions of records, that are protected from disclosure by the exemptions found at D.C. Official Code § 2-534. A FOIA request may be made for any public record. This does not mean, however, that a public body will disclose every public record sought. Statutory exemptions authorize the withholding of certain public records. The Legalization of Marijuana for Medical Treatment Amendment Act of 2010 does not appear to contain any statutory exemption for applications submitted to the

Department of Health. When a public body does withhold records or portions of records, it must specify which exemption of the FOIA permits the withholding. When part(s) of a public record may be withheld but another part cannot be withheld, FOIA requires that any reasonably segregable portion of the public record must be provided after deletion of the portion(s) to be withheld. See DC Official Code § 2-534(b).

When a FOIA request is made for the applications or portions of the applications for registrations for cultivation centers or dispensaries, an analysis based on the specific FOIA request will have to be conducted to determine whether the applications or portions of the applications may be released to the FOIA requester. A possible exemption for security plans and operations manuals for cultivation centers and dispensaries is the exemption for trade secrets, commercial information, or financial information obtained from outside of the District government to the extent that disclosure would result in substantial harm to the competitive position of the person or entity from whom the information was obtained. See D.C. Official Code § 2-534(a)(1). Certain personal information (such as birth dates) required in the applications may be exempted as information of a personal nature where public disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. See D.C. Official Code § 2-534.

Question: Department provided forms: Can you please advise when we can expect the Department provided forms to be made available and if they will be accessible on the HRLA Medical Marijuana web page? (e.g. "The applicant shall sign a written statement on a form provided by the Director attesting that the applicant assumes any and all risk or liability that may result under District of Columbia and federal laws from the operation of a medical marijuana cultivation center or dispensary.")

Response: All required forms from the Department for Cultivation Center applications and related forms were made available on the Medical Marijuana Webpage on August 12, 2011. Dispensary applications and related forms will be made available on or about September 16, 2011.

Question: We assume that there are no application "forms" per se. We only need to follow the instructions in the fourth rulemaking. Is this correct?

Response: Please refer to Medical Marijuana Webpage, the application and related materials were published on the website August 12, 2011 as indicated in the Letter of Intent Acceptance Notice.

- Question: Cultivation Application Question #4: Can you please clarify "Provide a description of the nature of the proposed operation"?
- Response: Please refer to the 4th Proposed and Emergency Regulations 22-C DCMR Medical Marijuana. The measures are direct with regards to information requested.
- Question: As the limitation on the number of plants is 95; how does the program see the cultivation center acquiring and maintaining this number of plants?
- Response: Please refer to 22-C DCMR 5403.1(b)(4). The applicant must submit a cultivation plan.
- Question: Is or will the process of cloning be allowed?
- Response: Please refer to 22-C DCMR 5704.1 A cultivation center shall be permitted to possess and cultivate up to ninety-five (95) living marijuana plants at any one (1) time for the sole purpose of producing medical marijuana in a form permitted under this subtitle.
- Question: Is or will a clone be considered a plant; thus part of the 95 plants authorized?
- Response: Please refer to 22-C DCMR 9900 Definition of Marijuana- shall have the same meaning as provided in section 102(3)(A) of the Controlled Substances Act. A link to the Controlled Substances Act is provided <http://www.deadiversion.usdoj.gov/21cfr/21usc/802.htm>
- Question: If several cultivation centers pool their resources on the required testing equipment and there is a designated testing center in one of the cultivation centers; what is the rule or methodology that should be employed in transporting the medical cannabis to be tested to/from the testing center?
- Response: Please refer to 22-C DCMR 5621 Transport of Medical Marijuana. Will we need to adjust this in rulemaking to allow for dispensaries to transport MM to labs?

(NOTE Name of Specific Business and proposed address removed from this question)

Question: Can our organization still apply for a Medical Marijuana Cultivation license without having a BBL or a Cert of Occupancy? In order for our organization to obtain a BBL we would first have to obtain a certificate of occupancy issued for the location we plan to operate. This is not easily done as our organization has not executed a lease for proposed location nor have we begun the build out of the site. We do have a LOI form our landlord attached. It seems to me that we would apply for a BBL and CofO after we where award the licenses?

Response: Prior to the issuance of a registration, the applicant must obtain a Basic Business License from the Department of Consumer and Regulatory Affairs with a General Business license endorsement. Please refer to 22-C DCMR 5301 Certificate of Occupancy and Permits and 22-C DCMR 5302 Registration Approval Before Issuance of Certificate of Occupancy.

Question: The rules regarding obtaining a certified surveyor's report for zoning compliance for cultivation centers (and dispensaries) -- on page 49 in section 5404.1(d) -- say one of the requirements for a business application is:

"A certified surveyor's report setting forth the proximity of the cultivation center or dispensary to the nearest public or private, preschool, primary or secondary school or recreation center, and the name of the school or recreation center;"

My question is: Does that mean we only need to locate the CLOSEST one to each site? Essentially, only identify one (the CLOSEST) one for each site, right? I know it may appear to be a stupid question because the answer seems so obvious, but I've been talking to a number of surveyors who want to charge us quite a bit of money for things like a "radius plat", a "improvement location survey" a "survey and mark", etc., which are very involved and detailed when it seems to me after reading the rules that we just need them to come out to the site and identify one other property (the closest public or private preschool, primary or secondary school or recreation center) and certify that it is far enough away.

Question 3 requests that applicants submit the following:

You must also provide a certified surveyor's report setting forth the proximity of the cultivation center to the nearest public or private, preschool, primary or secondary school or recreation center, and the name of the school or recreation center.

Does the Department want the surveyor's report to identify only the closest of **any** of these sensitive uses or are they asking applicants to indicate the

location of the closest of **each** use (the closest public school, closest private school, closest preschool, closest recreation center)?

Response: The surveyor's report needs to identify the closest school or recreation center to the proposed dispensary or cultivation center site.

Question: The way in which we produce our product may constitute certain "trade secrets"; by labeling with a list of all products in use it may violate our rights to such "trade secrets", is it imperative to list brand names or simply the chemical makeup of the ingredients used from the products be listed?

Response: Please refer to 22-C DCMR 5607.5 All medical marijuana shall be labeled with a list of all chemical additives, including but not limited to non-organic and organic pesticides, herbicides and fertilizers that were used in the cultivation and production of the medical marijuana.

Question: Do living plants include cuttings that do not have roots, or only when they reach a certain root mass are they considered a plant? If so, how long do the roots need to be to be considered a plant?

Response: Please refer to 22-C DCMR 9900 Definition of Marijuana- shall have the same meaning as provided in section 102(3)(A) of the Controlled Substances Act. A link to the Controlled Substances Act is provided <http://www.dea diversion.usdoj.gov/21cfr/21usc/802.htm>

Question: Can paraphernalia be purchased by the cultivation center from outside sources?

Response: Please refer to 22-C DCMR 5002 Permissible Activities and Limitations on Cultivation Centers and Dispensaries, 22-C DCMR 5709 Medical Marijuana and Paraphernalia Restrictions, and the Definition of Paraphernalia as defined in 22-C DCMR 9900.

Question: How will cultivation centers know the exact quantity to sell to each dispensary; is it solely based on patient numbers? How do find accurate information regarding acceptable levels to sell?

Response: Quantity sold is a business transaction between the cultivation center and the dispensary.

Question: Does the District provide cultivation centers with information pertaining to dispensaries that are in good standing or when a dispensary license has been suspended?

Response: Registration status shall be maintained on the Department of Health, Health Regulation and Licensing Administration webpage. It is incumbent upon registrants to verify active registration of a dispensary or cultivation center with which the organization conducts business. Please refer to 22-C DCMR 6206 Notice of Suspension or Revocation to Public.

Question: Specifically, which cannabinoids (CBD, CBC, etc) need to be as reported stated in 5607.1 (d) The cannabinoid profile of the medical marijuana contained within, including the THC level.

Response: A complete profile of the medical marijuana must be provided.

Question: What are the limitations on the amount that the cultivation center may hold in inventory?

Response: Please refer to 22-C DCMR 5704 Plant Limitations

Question: Are there any requirements for a transportation permit for a registered agent and do they have to be registered within D.C.? As written in section 5621 Transport of Marijuana.

Response: Please refer to 22-C DCMR 5621 Transport of Marijuana. Transportation registration applications will be made available at such time when applicants are notified that they are one of the ten registrants.

Question: Employee registration ID: Can employees have a registration ID for more than one dispensary and/or cultivation center? Meaning can they work at multiple dispensary or cultivation centers? If so, do they have to have separate ID cards for each?

Response: Registration is required for each dispensary and/or cultivation center.

Question: Labeling: Referring to section 5607.3, must all labels for ALL medicine "The label shall include all ingredients contained in the product, in order from most abundant to least abundant. The label for ingestible items shall identify potential food allergy ingredients, including milk, eggs, fish, shellfish, tree nuts, peanuts, wheat and soybeans. The product shall be packaged in a sealed container that cannot be opened without obvious damage to the packaging." Does this apply to ALL medicine (such as sales, etc.) or just edibles? And does the label have to be affixed to the actual container or can an unlabeled (or minimally labeled) container reside in a sealed, fully labeled bag suffice? Certain products typically come in containers or packaging in very small sizes (round 1" x 1/2"). Placing all required information on that type of packaging will make the font so small it may be difficult to read.

Response: Please refer to 22-C DCMR 5607 Labeling and Packaging of Medical Marijuana.

Question: Notice of Revocation of Inventory: There are 2 sections that appear to have conflicting requirements. Can you please clarify what the difference is between the two?

5605.3 - if a cultivation center or dispensary has had its registration renewal denied or revoked may obtain approval from Department by submitting written request to sell and transport medical marijuana to another cultivation center or dispensary.

6002.4 (b) - Upon receipt of a Notice of Revocation, a cultivation center or dispensary shall immediately begin to transfer all forms of medical marijuana in accordance with its closure plan, and be completed within 24 hours after receipt of the Notice of Revocation.

If 6002.4 (b) is required, then how can the cultivation center or dispensary submit written request to sell and transport to another cultivation center or dispensary and carry out the sale within 24 hours?

Response: The regulations are not in conflict. Applicants are advised to read the regulations completely and within the context of each section as they are written.

Question: If we apply for two cultivation centers for the same company in the same building, do we need to have separate books, separate employees, totally separate spaces? Do the cultivation centers have to be totally separate or can resources be shared?

Response: An application for a cultivation center registration should reflect that applicant's ability to operate independently. An application that is dependent upon another applicant may result in the failure of both applicants to successfully qualify for registrations.

Functions specific to cultivation center operations may not be shared. Each cultivation center must perform these functions in areas that are part of its discrete secure perimeter.

Areas are considered common areas if they are entirely outside the secure perimeter of both co-located cultivation centers. Common areas are limited to restrooms, stairwells, lobbies, and other such areas that provide common tenant services unrelated to cultivation center operations.

Question: Does the Notice of Emergency and Fourth proposed Rulemaking null and void previously issued notices 1, 2 and 3?

Response: The 4th Proposed and Emergency Regulations published on Friday, August 12, 2011 in the DC Register supersede the 1st, 2nd, and 3rd Proposed Regulations.

Question: Are there any circumstances which would permit DOH to grant an extension to complete the application for a cultivation center?

Response: Please refer to letter sent to all eligible applicants for cultivation centers on September 12, 2011 and published on the DC Medical Marijuana Program webpage.

Question: How much of the application fee is refundable if not approved?

Response: Please refer to the information provided in the Letter of Intent approval notice and on page two (2) of the cultivation center application. Please refer to 22-C DCMR 5417 Denied or Withdrawn Applications.

Question: When does the application begin?

Response: Please refer to the [Public Notice - Medical Marijuana Program Open Application Period for Cultivation Centers*](#) published in the DC Register on August 5, 2011 and on the DC Medical Marijuana webpage.

Question: When is the application Due?

Response: Please refer to the [Public Notice - Medical Marijuana Program Open Application Period for Cultivation Centers*](#) published in the DC Register on August 5, 2011 and on the DC Medical Marijuana webpage. Please refer to the subsequent notice extending the deadline to September 30, 2011 sent to all eligible applicants' designated contact by email on September 8th and September 12th by email.

Question: Where can I find the guidelines for the application?

Response: Please refer to the 4th Proposed and Emergency Regulations published in the DC Register and on the DC Medical Marijuana webpage on Friday, August 12, 2011.

Question: Can you recommend a professional that can assist and filling the application correctly?

Response: It is inappropriate for the Department or any District official to make such recommendations.

Question: The registration period is October 1 to September 20, 2012. The initial cultivation centers will not receive approval until the end of January thereby making the first term of registration only 8 months. Is this period going to be changed or the license fee prorated?

Response: No.

Question: The initial dispensaries will probably not receive approval until the end of February thereby making the first term of registration 7 months or less. Is this period going to be changed or the license fee prorated?

Response: No.

Question: On page 52, Section 3, subsection 3 it state "(up to ten (5) points)". Is this section worth 10 or 5 points?

Response: 5 points as stated in the application. A technical correction will be published with the final regulations.

Question: Would you have any objection to one cultivation center processing MMJ into honey oil for other centers? Would this be in violation of section 5703.2?

Response: Please refer to 22-CDCMR 5002 Permissible Activities and Limitations on Cultivation Centers and Dispensaries

Question: Will cultivation centers be allowed to require that all official visitors (auditors, inspectors, and MPD) remove outer wear and put on protective shielding (e.g. gloves, shoe covers, and lab coats) prior to entering grow areas?

Response: Please refer to 22-C DCMR 6100.4 A cultivation center may request that a Department investigator put on protective gear prior to entering a cultivation center.